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| APPLICATION NO.  | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|--|-------------|----------------------|---------------------|------------------|
| 10/550,890   | 09/27/2005  | Heinz Focke          | Q90107              | 3733             |
| 23373 7590 11/25/2008<br>SUGHRUE MION, PLLC<br>2100 PENNSYLVANIA AVENUE, N.W.<br>SUITE 800<br>WASHINGTON, DC 20037 |             |                      |                     |                  |
| EXAMINER   |             |                      |                     |                  |
| DEMEREE, CHRISTOPHER R   |             |                      |                     |                  |
| ART UNIT   |             | PAPER NUMBER         |                     |                  |
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**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

### Office Action Summary

**Application No.**

10/550,890

**Applicant(s)**

FOCKE ET AL.

**Examiner**

CHRISTOPHER DEMEREE

**Art Unit**

3782

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 18 August 2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 11-17 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 11-17 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/SE/US)  
Paper No(s)/Mail Date 9/5/2008.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

**DETAILED ACTION**

***Claim Rejections - 35 USC § 112***

1. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

2. Claims 11-17 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention. Examiner notes a double inclusion of "cigarettes" in the two independent claims. The preambles of Claims 11 and 17 are drawn to "A hinge-lid pack for cigarettes", and the body of each claim reintroduces a "cigarette group (34)". The scope of the claims are not clear since it is not clear whether or not the cigarettes are being positively claimed.

***Claim Rejections - 35 USC § 103***

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 11, 12 and 17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Draghetti (WO 02/32786 A1) in view of Bohdan (US 6832677 B2).

Regarding claim 11 and 17, Draghetti teaches a hinged-lid packet for cigarettes (see Abstract) comprising a box part (1) with box front wall (7), box rear wall (8), box side walls (9) and base wall (10), and a lid (5) which is pivotably attached to the box part and which comprises lid front wall, lid rear wall, lid side walls and end wall (see Fig. 1), characterized in that a region facing at least one of the side walls is configured as having a cross-section that is trapezoid in shape (see Fig. 4), with converging material strips or legs (22a and 22p) connected respectively to the box front wall and box rear wall and to the lid front wall and lid rear wall (see Fig. 1), said material strips having a width that is greater than the diameter of one cigarette and less than the aggregate diameter of two adjacent cigarettes (see Fig. 4).

Draghetti lacks teaching that said material strips or legs are directed at an angle of approximately 30 degrees to the box front wall and approximately 60 degrees to the transverse box side wall. It would have been obvious to one having ordinary skill in the art at the time the invention was made to construct the material strips or legs to be directed at an angle of 30 degrees to the front wall and 60 degrees to the side wall, since it has been held that discovering an optimum value of a result effective variable involves only routine skill in the art. In re Boesch, 617 F.2d 272, 205 USPQ 215 (CCPA 1980).

Draghetti, as modified above, discloses the claimed invention except for the cigarettes configured within the pack in its marginal region - in the region of the trapezoid-shaped cross section - a marginal transverse row with two adjacent cigarettes and a transverse row arranged adjacent thereto with three adjacent cigarettes, with the

cigarettes of the transverse row preferably assuming a saddle position with respect to the cigarettes of the transverse row. Bohdan teaches a cigarette channeling device wherein cigarettes are placed within a package in a 2-3-2 configuration substantially similar to that of the instant application. It would have been obvious to one of ordinary skill in the art at the time of applicant's invention to modify Draghetti's cigarette configuration in order to maximize the packing space within the package using Bohdan's channeling device (Bohdan; Col 2 lines 3-12).

Regarding claim 12, Draghetti, as modified above, teaches a hinged-lid packet for cigarettes characterized in that the width of the side walls (9) comprised of two overlapping side tabs (16i and 16'i) is somewhat less than the dimensions of two adjacent cigarettes (see Fig. 4).

6. Claims 13-16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Draghetti in view of Bohdan, as applied to Claim 11, and further in view of Focke et al. (US 6343691 B1; hereinafter Focke).

Regarding claim 13-15, Draghetti, as modified above, teaches everything except rounded corners where the side walls meet the front and rear walls of the cigarette box. Focke teaches a hinge-lid pack for cigarettes comprising rounded edges (54 and 55; see Figures 7-11). It would have been obvious to one of ordinary skill in the art at the time of applicant's invention to further modify Draghetti's cigarette box to include rounded corners in order to better adapt the container to the dimensions of the cigarettes stored within (Focke; Col 4 lines 52-55).

Regarding claim 16, Draghetti, as modified above, teaches everything except a collar for the cigarette box made from a separate blank. Focke teaches a hinge-lid pack for cigarettes comprising a collar (12) constructed from a blank separate to that of the box portion (see Fig. 12). It would have been obvious to one of ordinary skill in the art at the time of applicant's invention to further modify Draghetti's cigarette box to include a collar attached to the rear of the lid in order to reinforce the strength of the hinged lid (Focke; Col 4 lines 34-48).

### ***Response to Arguments***

7. Applicant's arguments, see Pages 8-9, filed 8/18/2008, with respect to the rejection(s) of claim(s) under USC 102(b) in view of Draghetti (WO 02/32786 a1) have been fully considered and are persuasive. Therefore, the rejection has been withdrawn. However, upon further consideration, a new ground(s) of rejection is made in view of Draghetti in view of Bohdan (US 6832677 B2).

### ***Conclusion***

8. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Sheahan (US 5487468 A). Sheahan teaches a cigarette package comprising an octagonal shape similar to that of the instant application.

9. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to CHRISTOPHER DEMEREE whose telephone number is (571)270-1982. The examiner can normally be reached on Mon-Fri, 8:00 AM-5:00PM, Alt Fri, EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Nathan Newhouse can be reached on (571) 272-4544. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Christopher Demeree/  
Examiner, Art Unit 3782

/Gary E. Elkins/  
Primary Examiner, Art Unit 3782